

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
MAX SHNETMAN,

Plaintiff(s),

-against-

2100 WHITE PLAINS ROAD, LLC, GALAXY
MANAGEMENT, INC."JOHN DOE", and JANE DOE,
INC." (Said names being fictitious, it being
the intention of plaintiff to designate any
and all owners of 2100 White Plains Road
being sued herein),

Defendant(s),

-----X

744 Lydig Avenue
Bronx, N.Y. 10469

February 28, 2006
10:35 a.m.

EXAMINATION BEFORE TRIAL of
the Plaintiff, MAX SHNETMAN, taken by the
respective parties, pursuant to Court Order,
before MELINDA MCCREA, a Notary Public for and
within the State of New York.

A P P E A R A N C E S:

KLEIN CALDERONI & SANTUCCI, LLP
Attorneys for the Plaintiff
MAX SHNETMAN
1614 Williamsbridge Road
Bronx, New York 10461
(718) 319-1400

BY: THOMAS SANTUCCI, ESQ.

LAW OFFICE OF PATRICK COLLIGAN
Attorneys for the Defendant
2100 WHITE PLAINS ROAD, LLC, GALAXY
MANAGEMENT, INC., "JOHN DOE", and
JANE DOE, INC." (Said names being
fictitious, it being the intention of
plaintiff to designate any and all
owners of 2100 White Plains Road
being sued herein),
701 Westchester Avenue - Suite 101W
White Plains, New York 10604
(914) 285-8500

BY: HOWARD CODD, ESQ.

ALSO PRESENT:
GEORGE TSILOGIANNIS

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the respective
parties hereto that all rights provided by the
C.P.L.R., including the right to object to any
question, except as to the form, or to move to
strike any testimony at this examination, are
reserved; and, in addition, the failure to
object to any question or to move to strike
testimony at this examination shall not be a
bar or waiver to make such motion at, and is
reserved for, the trial of this action.

IT IS FURTHER STIPULATED AND AGREED
that this examination may be sworn to, by the
witness being examined, before a Notary Public
other than the Notary Public before whom this
examination was begun, but the failure to do
so, or to return the original of this

1
2 examination to counsel, shall not be deemed
3 waiver of the rights provided by Rule 3116,
4 C.P.L.R., and shall be controlled thereby.
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6

7 IT IS FURTHER STIPULATED AND AGREED
8 by and between the attorneys for the respective
9 parties hereto that a copy of this Examination
10 Before Trial shall be furnished without charge
11 to the attorneys representing the witness
12 testifying herein.
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1
2 M A X S H N E T M A N, having been first duly
3 sworn by a Notary Public for and within the
4 State of New York, was examined and testified
5 as follows:

6 EXAMINATION BY

7 MR. CODD:

8 Q. Please state your name for the
9 record.

10 A. Max Shnetman.

11 Q. Where do you reside?

12 A. 2334 Boston Road, Bronx, New York
13 10467.

14 MR. CODD: Good morning Mr. Shnetman.
15 My name is Howard Codd and I represent the
16 defendant in this case. I'm going to sit
17 here and ask you some questions about what
18 happened about the incident that's the
19 basis of this lawsuit. If any of my
20 questions are unclear, please you let me
21 know.

22 THE WITNESS: Okay. What is your
23 first name.

24 MR. CODD: Howard.

25 THE WITNESS: You don't mind if I call

1 M. SHNETMAN

2 you Howard, you can call me Max.

3 MR. CODD: I'm call you Mr. Shnetman.

4 I'm going to assume you understand my
5 questions, if you don't tell me, okay.

6 THE WITNESS: Yes.

7 MR. CODD: I'm sorry, you can't answer
8 by nodding your head. She cannot take
9 down a nod of the head, you have to say
10 words.

11 THE WITNESS: Okay.

12 Q. Good morning, what is your date of
13 birth?

14 A. 3/26/29.

15 Q. What is your social security number?

16 A. 132-20-7513.

17 Q. Are you married or single?

18 A. Divorced.

19 Q. How long have you been divorced?

20 A. Since 1980.

21 Q. What is your ex-wife's name?

22 A. Sandra.

23 Q. Shnetman?

24 A. Yes.

25 Q. Do you have any children?

1 M. SHNETMAN

2 A. Yes.

3 Q. How many?

4 A. One.

5 Q. Boy or girl?

6 A. Boy.

7 Q. How old?

8 A. About 40 now.

9 Q. Does he live with you?

10 A. No.

11 Q. You're presently retired, is that
12 right?

13 A. Yes.

14 Q. What did you do for a living?

15 A. I started off as a teamsters and then
16 from there went to Local 2, Plumbing Union, and
17 from there I went into the hospital of Joint
18 Disease, then North General and I was
19 supervising and engineer maintenance. Joint
20 Diseases I started until they moved and became
21 North General Hospital.

22 Q. When did you retire from the North
23 General Hospital job?

24 A. 1997.

25 Q. The address you gave 2334 Boston

1 M. SHNETMAN

2 Road, is that a house or an apartment building?

3 A. Apartment building.

4 Q. Did you live in an apartment?

5 A. Yes.

6 Q. What's the apartment number?

7 A. 19-O.

8 Q. The letter O?

9 A. Yes.

10 Q. You rent that?

11 A. Yes.

12 Q. How long have you lived there?

13 A. Since 1980.

14 Q. This lawsuit arises out of an
15 accident that happened in 2004, is that right?

16 A. Right.

17 Q. Do you remember the date?

18 A. February 4th.

19 Q. What time of day did the accident
20 happened?

21 A. Eight o'clock in the morning, a.m.

22 Q. Where did this accident happen in
23 general, did it happen on a sidewalk or in a
24 street or somewhere else?

25 A. On a sidewalk.

1 M. SHNETMAN

2 Q. Where on a sidewalk, in front of what
3 building?

4 A. In front of the post office on Maran
5 Place.

6 Q. Is that in the Bronx somewhere?

7 A. Yes, it's in the Bronx.

8 Q. Do you or your attorney have any
9 photographs of where the accident happened?

10 A. Yes.

11 Q. Do you have them with you?

12 MR. CODD: Counsel, are there
13 photographs of the scene of the accident.

14 MR. SANTUCCI: It might be where they
15 produced.

16 MR. CODD: They might be?

17 Q. Maran place is spelled?

18 A. M-A-R-I-A-N.

19 MR. SANTUCCI: Off the record.

20 (DISCUSSION IS HELD OFF THE RECORD.)

21 MR. CODD: Please mark these for
22 identification.

23 (Plaintiff's Exhibit 1, a Photograph,
24 was marked for identification as of this
25 date by the Reporter.)

1 M. SHNETMAN

2 (Plaintiff's Exhibit 2, a Photograph;
3 was marked for identification as of this
4 date by the Reporter.)

5 (Plaintiff's Exhibit 3, a Photograph,
6 was marked for identification as of this
7 date by the Reporter.)

8 Q. Your attorney has handed your three
9 photographs which we marked Plaintiff's No. 1,
10 2 and 3, for indication this date. I'm going
11 to ask that you look at these three photographs
12 and tell me if you recognize what they show?

13 A. Yes, I recognize all three of them.

14 Q. You know who took these photographs?

15 A. Mr. Santucci and myself. Well, I
16 went with him, he went with me.

17 Q. When after the accident did you go
18 take those photographs?

19 A. Two days afterwards.

20 Q. When this accident happened, where
21 were you coming from?

22 A. I had my car, I parked my car on
23 White Plains Road.

24 Q. Had you driven from home?

25 A. Yes.

1 M. SHNETMAN

2 Q. Where were you planning to go to?

3 A. After I was going to deliver an
4 envelope into the post office I was going out
5 to Long Island to my son.

6 Q. So you left home that morning in your
7 car?

8 A. Yes.

9 Q. How far is this post office from
10 where you lived?

11 A. How far, let's see, one mile, about a
12 mile and a half.

13 Q. And you said you parked your car on
14 White Plains Road?

15 A. Right, across the street from the
16 post office.

17 Q. You parked your car on White Plains
18 Road across the street from the post office?

19 A. Yes.

20 Q. Is this post office on the corner of
21 Marian Place and White Plains Road?

22 A. Yes.

23 Q. Was your intention to deliver a
24 letter to the post office?

25 A. A letter into the box.

1 M. SHNETMAN

2 Q. Into the mailbox. Is that the mail
3 box that depicted on Plaintiff's No. 3 for
4 identification?

5 A. Yes, that's it.

6 Q. That was your immediate destination
7 at which point you were going back to your car
8 and drive back to Long Island?

9 A. To my son, right.

10 Q. Before this accident happened, did
11 you reach the box and put the letter in?

12 A. No.

13 Q. You were on your way to the box when
14 you fell?

15 A. Yes.

16 MR. CODD: Off the record.

17 (DISCUSSION IS HELD OFF THE RECORD.)

18 Q. Mr. Shnetman, looking at Plaintiff's
19 No. 3, does that show the mailbox you were
20 heading for.

21 A. Yes.

22 Q. The street that is going across
23 Plaintiff's No. 3, is that White Plains Road?

24 MR. SANTUCCI: Indicating left to
25 right?

1 M. SHNETMAN

2 A. Yes, underneath the train station.

3 Q. The train track go over White Plains
4 Road, right?

5 A. Yes.

6 Q. And similar, the street that this
7 white van is parked on Plaintiff's No. 3, is
8 Marian Place?

9 A. That's correct.

10 Q. Was your car packed on the far side
11 of White Plains Road?

12 A. It was on the right-hand side, it
13 would be across. You see where the mailbox is
14 right there (indicating), it's on the opposite
15 side. There's a CVS drug store over there.

16 Q. Did you cross White Plains Road when
17 you accident happened?

18 A. White Plains Road, no. I crossed
19 White Plains, but it was Marian Place over
20 here.

21 Q. When you had your accident, were you
22 crossing White Plains Road or had you placed
23 Marian Place?

24 MR. SANTUCCI: Objection to the form.

25 Q. When you had your accident, the

1 M. SHNETMAN

2 accident occurred on the sidewalk, is that
3 right?

4 A. Correct.

5 Q. Had you crossed Marian place or
6 crossed White Plains Road before the accident
7 happened; right before the accident happened?

8 A. Marian Place.

9 Q. If we look at again, looking at
10 Plaintiff's No. 3 for identification, you would
11 have gone from the right-hand side of this
12 picture to the left?

13 A. Right.

14 Q. And you arrived somewhere in the
15 vicinity to the mailbox?

16 MR. SANTUCCI: Objection to the form.

17 Q. Looking at Plaintiff's No. 2 for
18 identification, does that show the place where
19 you had your fall?

20 A. Yes.

21 MR. CODD: Counselor I don't know how
22 you feel about these things, would it be
23 possible to let your witness put a spot on
24 the photograph or perhaps we can make a
25 xerox of that.

1 M. SHNETMAN

2 MR. SANTUCCI: If he just want to
3 point to the general area.

4 MR. CODD: The problem is somebody
5 reading that transcript later wouldn't
6 know.

7 MR. SANTUCCI: I think from the
8 deposition looking at all that
9 photographs--

10 MR. CODD: How about Plaintiff's
11 No. 1, can he put an X or circle where he
12 fell.

13 MR. SANTUCCI: Let's get his testimony
14 first.

15 Q. I'm going to show you plaintiff No. 1
16 for identification, are you able to point to
17 the exact stop where you fell?

18 MR. CODD: Let the record reflect the
19 witness is pointing to a spot in the
20 middle of the photograph, but to the
21 right-hand side just to the right of it,
22 it looks like a piece of ice on the
23 sidewalk.

24 MR. SANTUCCI: It's an area that
25 appears to have red brick pavers at that

1 M. SHNETMAN

2 location.

3 Q. Now, we have some knowledge of where
4 he fell, can you make an X.

5 MR. SANTUCCI: These are the
6 originals, he described it.

7 MR. CODD: Off the record.

8 (DISCUSSION IS HELD OFF THE RECORD.)

9 MR. CODD: What I ask you to do for me
10 is make a copy of it so I can make a mark
11 on my copy. I'm going to let him point to
12 the copy and I can let him mark where he
13 fell.

14 Q. Mr. Shnetman, your attorney has
15 kindly provided us with copies of the three
16 photographs and again I'm going to show you
17 Plaintiff's No. 2. Plaintiff's No. 1, which is
18 the one you were pointing at and I'm making a
19 mark on my copy of Plaintiff's No. 1, the
20 circle I put on my copy of Plaintiff's No. 1,
21 is that where you pointed?

22 A. To the left a little.

23 MR. SANTUCCI: If that's the case, let
24 him mark it.

25 Q. Put a circle on plaintiff's No. 1.

1 M. SHNETMAN

2 where you fell?

3 A. (Marking).

4 Q. So immediately before this happened
5 you crossed over Marian Place?

6 A. Correct.

7 Q. Then you started walking on the
8 sidewalk in front of the post office to get to
9 that mailbox?

10 A. Correct.

11 Q. What happened?

12 A. As I was walking across all of a
13 sudden I went up and my leg went out under me
14 and I went forward. I slipped and fell down on
15 my arm, I grabbed the sidewalk on my arm.

16 Q. Which arm?

17 A. My left arm.

18 Q. So you put out your left arm as you
19 were falling?

20 A. Right.

21 Q. Did you end up falling flat forward,
22 how did you end up, did you fall all the way
23 down?

24 A. Did I what?

25 Q. Did you fall all the way down?

1 M. SHNETMAN

2 A. All the way down, yes, I landed on my
3 left arm.

4 Q. Did you feel pain on any part of your
5 body?

6 A. My arm at that time, no, I was a
7 little more or less getting up from falling.

8 Q. Do anybody see you fall?

9 A. No.

10 Q. Did anyone come to your assistance
11 when you fell?

12 A. No.

13 Q. Did you have anything in your hand?

14 A. I had an envelope in my hand.

15 Q. I know it was 8:00 in the morning,
16 did you have anything of an alcoholic nature to
17 drink at that time?

18 A. No.

19 Q. Had you had any sort of medication
20 that morning?

21 A. Yes.

22 Q. Tell me what kind?

23 A. Well, I took Gleevac.

24 Q. How do you spell that?

25 A. G-L-E-E-V-A-C.

1 M. SHNETMAN

2 Q. What do you take that for?

3 A. Leukemia.

4 Q. Does that medication make you dizzy
5 or unstable in any way?

6 A. No.

7 Q. How long have you been suffering from
8 leukemia?

9 A. Couple.

10 Q. Couple of years?

11 A. Yes.

12 Q. After you fell, did you get back up
13 at some point.

14 A. Yes.

15 Q. Did you get yourself up?

16 A. Yes.

17 Q. Were you bleeding from any part of
18 your body?

19 A. No.

20 Q. Did you lose consciousness?

21 A. No.

22 Q. At some point did you find out what
23 it was that made your right leg go forward?

24 A. Slipped.

25 Q. And what did you slip on?

1 M. SHNETMAN

2 A. I slipped on the ice.

3 Q. At any time before you slipped, did
4 you see the ice on the sidewalk?

5 A. Not really, I think it was from
6 before. It might have been covered up from
7 some snow.

8 Q. Do you recall the last time that it
9 snowed before the day of your accident?

10 A. No.

11 Q. Had it snowed that day?

12 A. No.

13 Q. What was the weather like that day?

14 A. At eight in the morning.

15 Q. Yes?

16 A. It was all right as far as I know.

17 Q. Was it snowing or raining or anything
18 like that?

19 A. No.

20 Q. What were you wearing?

21 A. What was I wearing?

22 Q. Yes?

23 A. I was wearing boots, dungarees, a
24 jacket, a hat.

25 Q. What kind of boots?

1 M. SHNETMAN

2 A. They were rubber boots.

3 Q. For snow?

4 A. Yes.

5 Q. I'm going to show you Plaintiff's
6 No. 1 and 2 again. Again, look at the area
7 where you fell, does those two photographs show
8 the way the ice and snow looked on the date of
9 your accident?

10 MR. SANTUCCI: You understand that?

11 A. This here wasn't like that it was
12 ice.

13 Q. Your pointing at Plaintiff's No. 1?

14 A. Here, you see the cement
15 (indicating).

16 Q. The read bricks?

17 A. Right, it wasn't like that.

18 Q. How is that photograph different from
19 the way of your accident?

20 A. It was all covered up.

21 Q. Covered up with what?

22 A. Snow, ice, I don't know. I just
23 walked and that was it.

24 Q. Was the whole area depicted in
25 Plaintiff's No. 1 covered with snow and ice or

1 M. SHNETMAN

2 could you see any of the red brick when you had
3 your fall?

4 A. You didn't see any of the red brick.

5 Q. You don't remember the last time it
6 snowed?

7 A. No.

8 Q. When you were walking on that
9 sidewalk that day right before you had your
10 accident, did it look like anybody shoveled it
11 or was it fresh snow?

12 A. It was fresh, it didn't look like
13 anybody shoveled it. I am referring to that
14 particular area.

15 Q. I know. Was the areas in the
16 vicinity look like it was shoveled?

17 A. I can't answer that, I don't know.
18 I don't recall.

19 Q. When you got up, what did you do
20 next?

21 A. I got up, I started shaking and I
22 went over to the mailbox. I threw the envelope
23 in and then I went back to my car.

24 Q. What did you do next, did you drive
25 somewhere, what did you do after that, you got

1 M. SHNETMAN

2 in your car, what did you do?

3 A. Took off for Long Island.

4 Q. Did you go to your son's house?

5 A. Yes.

6 Q. Were you feelings pain?

7 A. Not too much.

8 Q. Where do your son live?

9 A. Ronkonkoma.

10 Q. It was a two hour drive?

11 A. I'd say an hour.

12 Q. It was an hour drive?

13 A. Depends.

14 Q. And did you make it to your son's
15 house?

16 A. Oh yes.

17 Q. At some point did you feel that
18 something was wrong with your left arm?

19 A. At that time it started to tingle a
20 little bit.

21 Q. And you spend the day with your son?

22 A. Yes.

23 Q. Did you go home?

24 A. No.

25 Q. What did you do next?

1 M. SHNETMAN

2 A. My hand and arm was killing me.

3 Q. While you were at your son's house?

4 A. Yes.

5 Q. What did you do?

6 A. My son was working that day and when
7 he came home my daughter-in-law told him daddy
8 hurt himself so he took me to the hospital. My
9 son took me to Stony Brook Hospital.

10 Q. What did they do for you there?

11 A. Stony Brook, the doctor looked at me,
12 looked at my arm and took me into the x-ray
13 room, two x-rays were taken of it, told me to
14 wait outside, outside where the waiting room
15 was, where my son was and they called me back
16 to the examining room and the doctor said,
17 "Mr. Shnetman, you fractured your arm" and
18 they put me in a cast.

19 Q. You left the hospital that day in a
20 cast?

21 A. Yes.

22 Q. Did they give you any pain killers?

23 A. Yes.

24 Q. Do you remember what they gave you?

25 A. No.

1 M. SHNETMAN

2 Q. How long did you take the
3 painkillers?

4 A. Just for that night, that's all.

5 Q. How long did you wear the cast?

6 A. I wore it for about a week or so and
7 then I went to another doctor here in the
8 Bronx, if I recall.

9 Q. Let's stay with the day of the
10 accident. Did you spend the night at your
11 son's house?

12 A. Yes.

13 Q. Were you planning on spending the
14 night at your son's house?

15 A. Yes.

16 Q. Did you go home in pain?

17 A. Yes.

18 Q. The next day?

19 A. Next day.

20 Q. Did you drive yourself home?

21 A. Yes.

22 Q. You were able to do that with the
23 cast?

24 A. Yes, I was able to, I was driving for
25 60 some odd years.

1 M. SHNETMAN

2 Q. A week later you went to another
3 doctor, is that right?

4 A. Yes.

5 Q. Who?

6 A. Dr. K-O-D-I-L-E.

7 Q. You mean Dr. Kolick?

8 A. Yes.

9 MR. SANTUCCI: K-U-L-I-C-K.

10 Q. Who recommended you to Dr. Kulick?

11 A. I don't know whether it was a friend
12 or my regular doctor.

13 Q. Is doctor Kulick an orthopedist?

14 A. Yes.

15 Q. What did he do for you?

16 A. He examined me and put me with the
17 x-ray and et cetera, et cetera, he said you
18 wear the cast for a little while longer then
19 when I went back a couple of weeks later he
20 took the cast off and put me in a different
21 type of--

22 Q. Soft cast?

23 A. Yes, a soft cast.

24 Q. How long did you use the soft cast?

25 A. I don't recall.

1 M. SHNETMAN

2 Q. A month or so less, more?

3 A. About close to a month somewhere
4 around there.

5 Q. Did you continue to see Dr. Kulick?

6 A. Yes, after the cast and he said
7 that's it.

8 Q. Did he tell you at some point to stop
9 wearing the soft cast?

10 A. Yes.

11 Q. Did he take it off?

12 A. Yes, he took it off.

13 Q. How many times did you see
14 Dr. Kulick, total?

15 A. Three or four times. Not that I
16 saw him personally. I was told what to do,
17 go in take a x-ray.

18 Q. You saw somebody in his office?

19 A. Yes.

20 Q. The last time you saw Dr. Kulick
21 would have been April or May of 2004?

22 A. Somewhere around there.

23 Q. Since then have you seen any other
24 doctors for the fractured arm?

25 A. No.

1 M. SHNETMAN

2 Q. Have you been to any other hospital
3 about the arm?

4 A. No.

5 Q. Did you injure any other part
6 of your body in this fall other than your
7 arm?

8 A. No.

9 Q. Did you ever have any physical
10 therapy for the arm?

11 A. I do physical therapy now, but for
12 everything.

13 Q. Your other conditions?

14 A. Yes.

15 Q. How does the arm feel now?

16 A. It's all right. Sometimes it gets a
17 little sore, in the cold it cramps up on me
18 sometime.

19 Q. Are you taking anything for it,
20 Tylenol?

21 A. Sometimes he gave me aspirin to take,
22 not Tylenol.

23 Q. Who's he?

24 A. Doctor Lattmake (phonetic) my regular
25 doctor.

1 M. SHNETMAN

2 Q. Have he ever done anything for your
3 arm?

4 A. No.

5 Q. Have you seen anybody else for your
6 arm?

7 A. No.

8 Q. I know you said it cramps up a
9 little, do you get aches once in awhile?

10 A. Yes.

11 Q. Does it prevent you from doing
12 anything?

13 A. No, not really.

14 Q. Do you still drive?

15 A. Yes.

16 Q. You drove here?

17 A. Yes, if I didn't drive I might as
18 well jump off my terrace, if I didn't drive.

19 Q. Are you out-of-pocket any money,
20 did it cost you any money you didn't
21 get reimbursed, you didn't shell out
22 cash?

23 A. No.

24 Q. Did you have to take any public
25 assistance from this job?

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M. SHNETMAN

A. No.

MR. CODD: Thank you. It was a
pleasure talking to you, sir. I
appreciate it.

(TIME NOTED: 11:15 A.M.)

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M. SHNETMAN

A C K N O W L E D G E M E N T

STATE OF NEW YORK
COUNTY OF

I, MAX SHNETMAN, hereby certify that
I have read the transcript of my testimony
taken under oath in my deposition of February
28, 2006, that the transcript is a true and
complete and correct record of my testimony and
that the answers on the record as given by me
are true and correct.

MAX SHNETMAN

Signed and subscribed to
before me, this _____ day
of _____, 2004

Notary Public, State of New York

1 M. SHNETMAN

2 INDEX

3

4

WITNESS	EXAMINATION BY	FROM	TO
5 MAX SHNETMAN	MR. CODD	5	30

6

7

8

9 EXHIBITS

10 PLAINTIFF'S PAGE DESCRIPTION

11 1 9 Photograph

12 2 10 Photograph

13 3 10 Photograph

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M. SHNETMAN

C E R T I F I C A T E

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

I, MELINDA MCCREA, a Notary Public
for and within the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that
such examination is a true record of the
testimony given by that witness.

I further certify that I am not
related to any of the parties to this action by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 27th day of March, 2006.



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LAWYERS NOTES

Line

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